

Remarks

For the Claims:

Applicant has submitted claims 1-20, of which claims 1, 3, and 12 are independent claims. This Office Action rejects claims 1-20, i.e., all claims. Applicant hereby amends claims 3, and 12, and retains claims 1-2, 4-11, and 13-20 as originally or previously submitted. Applicant respectfully requests reconsideration.

This Office Action rejects claims 1, 5, 7-13, and 15-18 under 35 U.S.C. 102(b) as being anticipated by either Taggart, U.S. Patent No. 6,378,707 (hereinafter Taggart); Reynolds, U.S. Patent No. 2,045,614 (hereinafter Reynolds); Gibson, U.S. Patent No. 1,842,262 (hereinafter Gibson); or Oungst, U.S. Patent No. 845,972 (hereinafter Oungst).

This Office Action rejects claims 2, 4, and 14 under 35 U.S.C. 102(b) as being anticipated by Gibson, Oungst, or Reynolds.

This Office Action rejects claim 3 under 35 U.S.C. 102(b) as being anticipated by Gibson, or Oungst.

This Office Action rejects claim 6 under 35 U.S.C. 103(a) as being unpatentable over Taggart, Reynolds, Gibson, or Oungst in view of Breining et al., U.S. Patent No. 4,150,752 (hereinafter Breining).

This Office Action rejects claims 19 and 20 under 35 U.S.C. 103(a) as being unpatentable over Taggart, Reynolds, Gibson, or Oungst in view of Brozak, Jr., U.S. Patent No. 6,443,317 (hereinafter Brozak).

Each of applicants' independent claims 1, 3, and 12 claims "a substantially horizontal and planar bottom panel." Taggart, Reynolds, and Oungst fail to teach "a substantially horizontal and planar bottom panel." In fact, Taggart and Reynolds specifically teach no bottom panel at all, and may therefore be said to teach away from the use of a bottom panel. Oungst makes no mention of a bottom panel. However, Oungst is furniture, i.e., a desk-like base to support a tray. The use of a planar bottom panel in such a desk-like base is contraindicated in that such a panel would serve to cause the base to not sit stably upon an uneven floor. Were the base to be raised from the floor by feet or spacers, the use of a planar bottom panel would serve no practical function, and would only increase the cost and weight of the base.

Taggart, Reynolds, and Oungst simply fail to teach what is claimed. As stated in Akzo N.V. v. U.S. International Trade Commission, 1 USPQ 2d 1241, 1245 (Fed. Cir. 1986), cert. denied, 482 U.S. 909 (1987):

Under 35 U.S.C. §102, anticipation requires that each and every element of the claimed invention be disclosed in the prior art....
(emphasis added)

Therefore, Taggart, Reynolds, and Oungst are improperly used as grounds for rejection of applicants' independent claims 1, 3, and 12.

Neither would it be obvious to modify Taggart, Reynolds, or Oungst to effect what is claimed, as there is no suggestion of any sort that such a substantially horizontal and planar bottom panel would be of any benefit to Taggart, Reynolds, or Oungst. Lacking suggestion, the inference that it would be obvious to modify Taggart, Reynolds, or Oungst to include a substantially horizontal and planar bottom panel provides strong evidence of having been made by reading the claims of the present invention into Taggart, Reynolds, and Oungst. This constitutes hindsight, and is forbidden. As stated in In re Fritch, 23 USPQ 2d 1780, 1784 (Fed. Cir. 1992):

It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that "[o]ne cannot used hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention".

Each of applicants' independent claims 1, 3, and 12 also claims left and right panels coupled to the bottom panel. Gibson fails to teach side panels. That is, Gibson teaches an open-sided structure. Gibson therefore fails to teach what is claimed. Gibson, too, is improperly used as grounds for rejection of applicants' independent claims 1, 3, and 12 (see Akzo N.V. V. U.S. International Trade Commission, supra).

Neither would it be obvious to add side panels to Gibson, as they would serve no function but to increase the cost thereof. There is, therefore, no suggestion in Gibson for the use of side panels. The inference that it would be obvious to modify Gibson to include side panels provides strong evidence of having been by reading the claims of the present invention into Gibson. This

constitutes hindsight, and is forbidden (see In re Fritch, supra).

Therefore, applicants believe that independent claims 1, 3, and 12 are allowable over Taggart, Reynolds, Gibson, or Oungst, either severally or in any combination. Independent claim 1 remains as previously presented. Independent claim 3 is hereby amended for a grammatical error having no effect upon substance. Independent claim 12 is hereby amended to more strongly emphasize the planar nature of the bottom panel. Applicants respectfully request reconsideration of independent claims 1, 3, and 12.

Claims 2, and 4-11 are dependent, either directly or indirectly, from independent claim 1. Claims 13-20 are dependent, either directly or indirectly, from independent claim 12. Inasmuch as applicants believe independent claims 1 and 12 to be allowable, applicants believe claims 2, 4-11, and 13-20 to be allowable by reason of dependency. Applicants respectfully request reconsideration of claims 2, 4-11, and 13-20.

Accordingly, this Amendment amends claims 3 and 12. Currently amended claims 3 and 12 remain in the application and are believed to be allowable. In addition, claims 1-2, 4-11, and 13-20 remain in the application as originally or previously submitted and are believed to be allowable.

Applicant believes that the foregoing amendments and remarks are fully responsive to the rejections and/or objections recited in the 4 October 2005 Office Action and that the present application is now in a condition for allowance. Accordingly,

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reconsideration of the present application is respectfully
requested.

Respectfully submitted,



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